

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

9 United States of America,) No. 08-2039-PHX-EHC
10 Plaintiff/Respondent,)
11 vs.) **ORDER**
12 Jeanette B. Wilcher,)
13 Defendant/Movant.)
14
15

Movant filed a Motion to be Released from Federal Prison Pending Final Disposition. (Dkt. 10.) Respondent filed a Response. (Dkt. 11.) Movant did not file a reply.

On May 8, 2009, Magistrate Judge Lawrence Anderson filed a Report and Recommendation. (Dkt. 12.) On May 18, 2009, Movant filed a Notice to the Court, which the Court will construe as an Objection to the Report and Recommendation. (Dkt. 14.)

I. Standard of Review

22 A district court judge reviews *de novo* the portions of the Magistrate Judge's Report
23 and Recommendation to which Petitioner has filed an objection. 28 U.S.C. § 636(b)(1)(C).
24 The district court may accept, reject, or modify, in whole or in part, the findings or
25 recommendations made by the magistrate judge. *Id.*

20 | //

27

1 **II. Discussion**

2 Movant requests to be released from federal prison pending final disposition of her
3 habeas petition, pursuant to 28 U.S.C. § 2255.¹ (Dkt. 10.) Respondent opposes Movant's
4 request. (Dkt. 11.) The Magistrate Judge recommends denying Movant's Motion to be
5 Released from Federal Prison because Movant fails to establish that she is likely to prevail
6 on the merits of her case and does not establish that "special circumstances" exist. (Dkt. 12.)

7 Movant contends that she "demonstrated the existence of [s]pecial [c]ircumstances
8 ([her] failing health) and the probability of success in [her] § 2255 motion." (Dkt. 14 at 2.)
9 Movant does not provide any support for these contentions. Movant again fails to
10 demonstrate a likelihood of success on her habeas petition. In fact, the Magistrate Judge's
11 April 30, 2009 Report and Recommendation recommends denying Movant's habeas petition.
12 (Dkt. 9.) Movant also fails to provide any evidence supporting her contention that her failing
13 health creates a special circumstance for release.

14 Movant also claims that she has not received proper medical care in violation of her
15 constitutional rights. (See Dkt. 14 at 1.) The proper proceeding in which to challenge the
16 conditions of a prisoner's confinement is a civil rights action, not a habeas corpus petition.
17 Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (citing Preiser v. Rodriguez, 411 U.S. 475,
18 484 & 498-99 (1973)). Therefore, the Court does not address this claim.

19 The Court, having reviewed the record *de novo*, adopts in full the Report and
20 Recommendation and incorporates the same as a part of this Order.

21 Accordingly,

22 **IT IS ORDERED** adopting the Report and Recommendation of the Magistrate Judge
23 filed May 8, 2009 (Dkt. 12).

24
25
26 ¹Movant's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C.
27 § 2255 (Dkt. 1) and the Magistrate Judge's April 30, 2009 Report and Recommendation
28 (Dkt. 9) remain pending before the Court.

1 **IT IS FURTHER ORDERED** denying Movant's Motion to be Released from
2 Federal Prison Pending Final Disposition (Dkt. 10).

DATED this 12th day of June, 2009.

Earl Harrold

**Earl H. Carroll
United States District Judge**